

REMARKS

Claims 1-10 and 21-25 are pending and under consideration, claims 11-20 were withdrawn from consideration, pursuant to a restriction requirement.

Rejection Under 35 U.S.C. § 102(b)

Claims 1-6 and 22 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by *Zettle* (U.S. Patent No. 5,900,293). This rejection is traversed. Claim 1 has now been amended to clarify the structure of the invention. Applicants respectfully request withdrawal of the rejection.

The present invention requires a continuous sidewall in vertical profile, i.e. a sidewall without a joint. As the drawings make clear, the sidewall is continuous from the lower frustum section through the narrow mid-section to the upper frustum. *Zettle* does not fairly teach or suggest a container with a continuous sidewall.

Zettle is a container which collapses on purpose. As such, *Zettle* teaches sections that nest concentrically within one another (see column 2 line 5-10, figures 2 and 3) and are separated by living hinges. Thus, the container is configured to collapse at different points on the sidewall (see column 4, lines 33-35). When contracted, the middle section folds between the upper and lower sections (see figures 2 and 8). Accordingly, the sidewall of *Zettle* is not continuous due to the expansion/contraction joints of the upper and lower sections and the separations between them. Therefore, the *Zettle* reference does not anticipate the present invention.

Submitted herewith is a declaration of Christopher Farrell who has considerable experience in plastic container development. Mr. Farrell opines that the *Zettle* container is unsuitable for retort or hot fill purposes and in any event does not have a sidewall that is continuous in vertical profile.

Further, by design, the *Zettle* container does not maintain its shape, even in ordinary use. The container is designed to collapse and expand. Either change of state is a deformation from the prior state. In contrast, the present container withstands permanent deformation to a retort or a net fill process.

Rejection Under 35 U.S.C. § 103(a)

Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Zettle* in view of *Randall* (U.S. Patent No. 5,996,882). Claim 9 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Zettle* in view of *Fortuna* (U.S. Patent No. D279,550). Claim 10 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Zettle* in view of *Edwards* (U.S. Patent No. D270,814). Claims 21, 23 and 24 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Zettle* in view of *Cistone et al.* (U.S. Patent No. 5,865,345). Claim 25 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Zettle* in view of *Cistone et al.* and *Fortuna*. Applicants respectfully traverse these rejections and request withdrawal of same.

All of the obviousness rejections are based primarily on the application of *Zettle*. Yet, *Zettle* does not fairly teach or suggest or even relate to a container such as that claimed. As previously stated, the *Zettle* reference is container which collapses on purpose to conserve storage space (see column 1, lines 56-60) and by definition cannot avoid deformation.

Regarding to claims 24 and 25, the *Cistone et al.* reference teaches a container for dispensing two substances wherein the substances are contained in two chambers separated by a common wall (see column 3, lines 21-27). The container further includes two orifices positioned within a neck portion to dispense the substances. The size and shape of the orifices can be varied to adjust the dispensation rate of the two substances (see column 4, lines 16-22). Thus, in operation, the two chambers are forced/squeezed to dispense the two substances simultaneously through the neck portion. The *Cistone et al.* reference further teaches extruder screws within the chambers to extrude the two substances out of the neck portion (see column 4, lines 78-42 and figure 6).

Applicants respectfully submit that the Examiner's reference by reference, limitation by limitation analysis fails to demonstrate how the *Zettle* reference in combination with the other references teach or suggest their combination to yield the claimed invention. To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art and not based on the applicants' disclosure. Further, not only must the Examiner find each element of the claimed invention in the prior art, the Examiner must show upon "rigorous application" the proper motivation or suggestion to combine wherein the showing "must be clear and particular" See In re Dembiczak, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 17 (Fed. Cir. 1999).

Regarding the first criteria, the references do not provide any suggestion to modify the references to obtain the claimed invention. Instead, incorporating the teachings of the *Cistone et*

al. reference with the *Zettle* reference would defeat the purpose of the *Zettle* reference. In *Zettle*, the container is collapsible to conserve storage space wherein any unused portion of the container collapses within itself. In the *Cistone et al.* reference, however, the container is acted upon to dispense different substances. Thus, one skilled in the art would not be motivated to seek to combine the references since “collapsing” the container taught by the *Cistone et al.* reference results in the contained substance being dispensed whereas collapsing the container taught by the *Zettle* reference results in the contained substance being stored with less volume.

Regarding the second criteria, the cited references do not provide a reasonable expectation of success. Other than applicants’ disclosure, applicants are unaware of any prior uses of the claimed container. Applicants respectfully submit a declaration of one skilled in the art relating to present invention and the cited references.

Finally, the cited references do not teach or suggest all the claim limitations of the present invention. In particular, the cited references do not teach a continuous sidewall. Instead, the primary reference teaches a collapsible sidewall. Additionally, the cited references do not teach a hot fill or retort process.

In order to meet an obviousness requirement, the requirement has to meet some suggestion that the cited references have similar features or structures. To suggest otherwise pertains to an impermissible hindsight reconstruction. The standard, rather, is whether the reference taken as a whole would have suggested the applicants’ invention to one of ordinary skill in the arts at the time the invention was made.

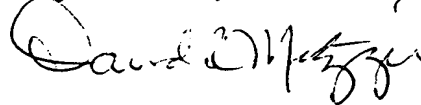
Applicant respectfully submits that since amended claim 1, 24 and 25 are patentable, all dependent claims therefrom are also patentable.

CONCLUSION

The Applicant respectfully requests withdrawal of the rejection and believes that the claims as presented represent allowable subject matter. However, if the Examiner desires, the Applicants' attorney is ready for a telephone interview to expedite prosecution. As always, the Examiner is free to call the undersigned at 312-876-2578.

Respectfully submitted,

By its attorney,



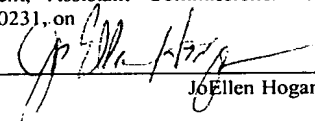
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6/21/02

Date


Jo Ellen Hogan



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent Application of:)	
G. Manderfield, Jr. and Ted L. Beaver)	
)	
Serial No.: 09/603,255)	Examiner: N. Eloshway
)	
Filed: June 23, 2000)	Group Art Unit: 3727
)	
For: MOLDABLE PLASTIC)	
CONTAINER WITH)	
HOURGLASS PROFILE)	

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In The Claims

Please amend claims 1, 24 and 25 as follows:

1. (Twice Amended) A plastic molded container, comprising:
a bowl comprising an upper rim, a bottom and a sidewall extending between the upper rim and the bottom,
the sidewall comprising a lower frustum section, a narrow mid-section, and an upper frustum section, the sidewall being continuous in vertical profile,
the lower frustum section connecting the bottom to the mid-section, the lower frustum section decreasing in width as the lower frustum section extends from the bottom to mid-section,
the upper frustum section connecting the upper rim to the mid-section, the upper frustum section decreasing in width as the upper frustum section extends from the upper rim to mid-section, and
the container being constructed such that it is capable of resisting permanent deformation when used in a hot fill or retort process.

24. (Once Amended) A plastic molded container comprising:

a bowl comprising an upper rim, a bottom and sidewall extending between the upper rim and the bottom,

the sidewall comprising a lower frustum section, a narrow mid-section, and an upper frustum section, the sidewall being continuous in vertical profile,

the lower frustum section connecting the bottom to the mid-section, the lower frustum section decreasing in width as the lower frustum section extends from the bottom to mid-section,

the upper frustum section connecting the upper rim to the mid-section, the upper frustum section decreasing in width as the upper frustum section extends from the upper rim to mid-section,

the container being constructed such that it is capable of resisting permanent deformation when used in a hot fill or retort process,

the sidewall being made of blow-molded materials, and the container having at least one oxygen barrier layer.

25. (Once Amended) A plastic molded container comprising:

a bowl comprising an upper rim, a bottom and sidewall extending between the upper rim and the bottom,

the sidewall comprising a lower frustum section, a narrow mid-section, and an upper frustum section, the sidewall being continuous in vertical profile,

the lower frustum section connecting the bottom to the mid-section, the lower frustum section decreasing in width as the lower frustum section extends from the bottom to mid-section,

the upper frustum section connecting the upper rim to the mid-section, the upper frustum section decreasing in width as the upper frustum section extends from the upper rim to mid-section,

the container having an overall diameter and a height, the diameter being greater than the height,

the container being constructed such that it is capable of resisting permanent deformation when used in a hot fill or retort process, and

the sidewall having a plurality of layers, at least one of which is an oxygen barrier layer.

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